

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jerry Patton,

Case No.: _____

Plaintiff,

vs.

COMPLAINT

The United States of America,

Defendant.

1. Jerry Patton brings this lawsuit for injuries sustained as a direct result of negligent conduct by the agents and employees of the Veterans Health Administration (VHA), a division of the United States government's Department of Veterans Affairs. Jerry Patton claims that the VHA departed from accepted standards of medical practice when it failed to refer him for a neurosurgery consult because the referral "got lost to follow up" after an orthopedic consult with Dr. Harry Robinson was had on 7/22/13. This caused a delay in Jerry's treatment of his bilateral hip pain and culminated in Jerry going to see Dr. Falloon on 2/14/14. Jerry had surgery on 2/26/14. Because of the long delay the surgery was more difficult. Jerry had a spinal fluid leak during the surgery, had to lie on his back for three days after the surgery, and has continuing numbness in his leg and knee pain. Jerry Patton claims that the departures from accepted standards that the VHA employees made caused these injuries and damages.

Parties

2. Jerry Patton lives at 1124 South Broadway in Sauk Rapids, Benton County, Minnesota. He received negligent care from the St. Cloud (Minnesota) VA Health Care System.

3. Defendant United States of America [USA] operates the Department of Veterans Affairs, which in turn operates the Veterans Health Administration [VHA]. VHA operates the Minneapolis VA [Veterans Administration] Health Care System and the St. Cloud [Minnesota] VA Health Care System. Defendant USA, in the administration of the VHA and the Minneapolis and St. Cloud VA Health Systems, employs nurses, clerks, and other personnel and USA is vicariously responsible for the conduct of those employees.

Jurisdiction and Venue

4. Subject matter jurisdiction for this medical negligence suit against the United States is provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b) and 2671-2680.

5. On May 24, 2016, Jerry Patton submitted an administrative tort claim by filing a Standard Form 95 with the Department of Veterans Affairs, demanding two hundred and fifty thousand dollars (\$250,000) in damages for the delay in his treatment and complications with his surgery.

6. By letter dated June 27, 2016, the Department of Veterans Affairs, through its General Counsel in Washington, DC, acknowledged receipt of Bob's Standard Form 95 tort claim, and noted that they have 6 months to consider the claim.

7. On March 17, 2017, in accordance with the FTCA §§ 1346(b) and 2671-2680, Title 28, United States Code, defendant United States, through the Office of General Counsel – Midwest District West of the U.S. Department of Veterans Affairs, denied Jerry Patton's claim on the grounds that they believe the claim is time barred by section 2401(b), title 28, United States Code (U.S.C.).

8. A request for reconsideration of the March 17, 2017 claim denial was submitted by letter dated August 14, 2017 to the Department of Veterans Affairs.

9. In a letter dated September 6, 2017 the Department of Veterans Affairs' Office of General Counsel in Washington DC acknowledged receipt of Jerry's request for reconsideration.

10. In a letter dated February 10, 2020, but received by Jerry Patton on August 5, 2020, the Department of Veterans Affairs in accordance with the FTCA §§ 1346(b) and 2671-2680, Title 28, United States Code, again denied Jerry Patton's claim on the grounds that they still believed it was time barred by section 2401(b), title 28, United States Code (U.S.C.).

11. This final denial letter also informed Jerry Patton that further action could be taken under FTCA §§ 1346(b) and 2671-2680, Title 28, United States Code, but such a suit needed to be initiated within 6 months after the date of mailing of the final denial. The final denial letter was marked February 10, 2020 but was not received until August 5, 2020.

12. This complaint is being filed within 6 months of the August 5, 2020 final denial letter, and thus is timely as specified by 28 U.S.C. § 2401(b).

13. Venue in this district is proper under 28 U.S.C. § 1402 (b).

14. All of the acts of negligence and other wrongful conduct of the agents, servants, and/or employees of defendant United States described herein were committed within the course and scope of their agency, service, and/or employment by defendant United States.

General Allegations

15. Jerry Patton was born on March 9, 1949. Jerry is married and lives at 1124 South Broadway Sauk Rapids, Benton County, Minnesota.

16. Jerry Patton is a military veteran who served in the United States Army starting on September 11, 1969 and was honorably discharged on September 4, 1971. Jerry has a 10% service-connected disability rating for tinnitus.

17. According to VA records Jerry had an orthopedic consult with Dr. Harry Robinson on 7/22/13 at the St. Cloud Veterans Administration (VA) Health Care System for bilateral hip pain.

18. Dr. Robinson ordered an MRI of the lumbar spine and was going to decide whether to refer Jerry to his primary physician or out to surgery depending on what the MRI showed.

19. A record from September 2013 asks that Jerry be seen for a neurosurgery consult, and another record reports that Jerry was seen by orthopedics in St. Cloud and "got lost to follow up."

20. Jerry was seen by neurosurgery in Minneapolis on 10/24/13 and they said they wanted to refer Jerry back to orthopedic surgery. In December of 2013, the VA finally scheduled Jerry to be seen outside the VA by Dr. Falloon.

21. Jerry was seen by Dr. Falloon on 2/14/14 and had back surgery on 2/26/14.

22. Because of the delay between the 7/22/13 orthopedic consult and the 2/26/14 surgery, the 2/26/14 surgery was more difficult. Jerry had a spinal fluid leak during the surgery, and Jerry had to lie on his back for three days following the surgery.

23. Since the surgery Jerry has numbness in his leg and knee pain.

24. This claim should not be time barred as the claim did not accrue until the extent of Jerry's injuries were fully realized, and this did not occur until sometime after the 2/26/14 back surgery. The claim was sent to the VA on May 24, 2016 within 2 years of fully realizing the extent of Jerry's damages. section 2401(b), title 28, United States Code (U.S.C.) is satisfied in this case, and Jerry Patton's claim should be heard.

Allegations of Negligence

24. Jerry Patton did not have his back surgery performed in a timely manner due to the negligent actions of VA medical personnel. The appropriate standard of care required Jerry to be referred out to surgery immediately following the 7/22/13 orthopedic consult with Dr. Harry Robinson, to not lose his follow up notice and referral, and to ensure that Jerry did not have to wait over a year before having surgery on his back. As a direct result of the VA Health Care System's negligent failure to assist and refer Jerry in a timely manner, Jerry had complications with his surgery and continues to have numbness in his legs along with knee pain.

Allegations of Damage

25. As a direct result of the negligence of agents and employees of the VA Health Care System, Jerry Patton was not able to have surgery on his back performed in a timely manner. This has caused further injury to his back, legs, and knees that are ongoing and permanent. Plaintiff Jerry Patton estimates that the reasonable monetary value of these injuries is in excess of fifty thousand dollars (\$50,000).

26. Jerry Patton reserves the right to supplement these claims as consultations with additional experts are completed.

WHEREFORE plaintiff Jerry Patton demands judgment against defendant The

United States of America:

- [1] For damages in excess of fifty thousand dollars (\$50,000); and
- [2] For costs, disbursements, and interest as allowed by applicable laws.

I hereby acknowledge that sanctions may be awarded pursuant to Minn. Stat. § 549.211.

BRADSHAW & BRYANT, PLLC

Dated: 2/2/2021

By:



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